

RESCUE Drug Testing Scheme Consultation Paper

September 2013



Action Committee Against Narcotics

RESCUE DRUG TESTING SCHEME

Consultation Paper

CHAPTER 1. INTRODUCTION

1.1 The Action Committee Against Narcotics (ACAN) has prepared this consultation document to invite public discussion on whether and, if so, how legislation should be introduced to authorise drug testing on a person when there are reasonable grounds, based on strong circumstantial conditions, to suspect that the person has taken dangerous drugs. The purpose is to identify drug abusers early and refer them to counselling and treatment programmes in a timely manner. It goes without doubt that public consensus is a prerequisite for pursuing such a scheme.

1.2 The topic of drug testing originated from the recommendation of the high-level, inter-departmental Task Force on Youth Drug Abuse (Task Force) chaired by the then Secretary for Justice from 2007 to 2008. As a matter of principle, the Task Force recommended the introduction of new legislation to empower law enforcement officers (LEOs) to require a person reasonably suspected of having consumed dangerous drugs to be subject to a drug test. The purpose would be to identify drug abusers as early as possible and then help them quit drugs. The Task Force fully recognised the sensitive issues and implications involved in seeking to introduce such a drug testing scheme, particularly from the human rights perspective. The Task Force further advised that the community must be consulted in mapping out the way forward.

1.3 The Government and different sectors have in the past few years focused efforts on implementing the wide range of recommendations laid out in the report of the Task Force. Such efforts have resulted in improvements in the drug situation. Yet there has been an alarming lengthening in the drug history of abusers.

1.4 ACAN is of the view that there is a need to evaluate the case for a drug testing scheme, with the primary focus being on early identification of drug abusers and to provide them with timely assistance. ACAN also acknowledges that important issues including the extent of coverage, human rights concerns and implementation details have to be carefully considered.

1.5 ACAN now proposes to consult the public on a drug testing scheme named the RESCUE Drug Testing Scheme (RDT). “RESCUE” is an acronym for “Reasonable and Early Screening for Caring and Universal Engagement”. Under RDT, it is envisaged that when there are reasonable grounds based on strong circumstantial conditions to suspect that a person has taken dangerous drugs, LEOs would require that person to undergo a drug test. Where applicable, those who are identified as having taken drugs would be referred to counselling and treatment programmes in lieu of prosecution.

1.6 We invite members of the public to consider the issues set out in this document and provide feedback. The consultation period will last for four months. Following the end of the public consultation period, ACAN will summarise the views received and recommend the way forward for the Government to further consider.

CHAPTER 2. THE CASE FOR RDT

2.1 In Hong Kong, we have long followed a five-pronged approach in anti-drug policy and measures. The strategy involves preventive education and publicity, treatment and rehabilitation, legislation and law enforcement, external co-operation, and research. Many of the measures are aimed at suppressing the risk factors and strengthening the protective factors. Efforts were made to step up these measures with emphasis on the drug abuse problem among young people after the thorough review by the Task Force.

2.2 Having reviewed the work done in the past few years and the latest drug situation, ACAN is of the view that there is a case for considering RDT as an additional anti-drug measure. RDT has the specific objective of helping to identify as early as possible those abusing drugs, and referring them to social workers or health-care professionals to join counselling and treatment programmes.

A. Characteristics of Local Drug Consumption

Number of drug abusers has dropped

2.3 Since the release of the Task Force Report in 2008, there have been coordinated measures to implement its 70-plus recommendations, with the objective of tackling the drug problems in a holistic manner. The drug situation has shown some remarkable improvement. The overall number of drug abusers reported to the Central Registry of Drug Abuse (CRDA) fell by 23% to 10 939 in 2012 from the peak of 14 241 in 2008. The decline among those aged under 21 was more pronounced, having decreased by 54% from 3 474 to 1 591 in the same period.

2.4 The “2011/12 Survey of Drug Use among Students” (the Student Survey) confirmed the downward trend of drug-taking among students with declines in both the prevalence rate and the number of drug takers across all education levels.

2.5 The percentage of secondary schools which had recorded 30-day drug abusers also decreased from 90% to 82%. The number of drug crimes in schools fell from 24 in 2009 to five in 2012, and the

number of students involved dropped from 41 to three over the same period.

Drug history getting longer

2.6 Although the overall number of reported drug abusers has declined steadily, it has taken longer and longer for drug abusers to be reached by the help networks: half of the abusers newly reported to the CRDA in 2012 had abused drugs for at least 4.0 years. Compared with 1.9 years in 2008, the figure has more than doubled over a span of five years. More than 80% of the drug abusers reported to the CRDA took drugs at their own home or a friend's home.

Newly reported drug abusers getting older

2.7 An increasing proportion of drug abusers were identified in their young adulthood (21 to 30 years old) instead of adolescence. In 2009, over half (51%) of drug abusers reported for the first time were aged below 21, while in 2012 it accounted for 35%. Meanwhile, the proportion of those aged between 21 and 30 increased from 32% in 2009 to 38% in 2012. Some anti-drug workers attributed the growth in the group aged between 21 and 30 to the fact that many started abusing drugs in their teens but remained unnoticed until adulthood.

2.8 The figures above show that the challenge we face has gone beyond schools. A large proportion of drug abusers are de facto our working population. Drug abuse affects not only their performance at work but also their co-workers, the people they serve and to a larger extent the public. Our society as a whole is paying the price.

Psychotropic substances increasing in prevalence

2.9 Since 2007, psychotropic substances such as ketamine, cocaine and methamphetamine (also known as "ice") have become more prevalent than the traditional drugs (mainly heroin) in Hong Kong ¹, especially amongst young people. In 2012, 97% of young drug abusers ² took psychotropic substances. A certain proportion takes multiple drugs,

1 Source: CRDA.

2 Refers to those under the age of 21.

such as ketamine together with ice and zopiclone. Polydrug abuse would normally increase the level of toxicity, causing more bodily harm.

Easy availability of drugs

2.10 According to the Student Survey, students most commonly obtained drugs from friends and schoolmates. They most often obtained drugs and took drugs at “friends’/schoolmates’/neighbours’ home”, “bar, pub or club” and “students’ own home”. This is corroborated by reports by non-government organisations (NGOs) that drugs could be obtained either through personal networks or by home delivery through phone calls or text messages to drug dealers. There are also forums and discussion groups in cyberspace about drugs, with secret codes to serve as cover.

2.11 The more prevalent psychotropic substances such as ketamine and ice are synthetic chemicals. They are much cheaper than traditional opiate drugs like heroin. The cost of one dosage of ketamine could be as low as HK\$30³. According to the Student Survey, nearly half of drug taking students (45%) claimed that they had been offered drugs free of charge. Pocket money (34%) was also used for buying drugs.

B. The Importance of Early Identification and Early Assistance

2.12 Unlike traditional drugs, psychotropic substances do not lead to immediate withdrawal symptoms. They are consumed in an inconspicuous manner, e.g. by snorting or swallowing, without any paraphernalia. It is increasingly difficult to detect problems.

2.13 Research suggests that prolonged abuse of psychotropic substances can lead to severe cognitive impairment, depression and hallucinations, and even induce dementia-like symptoms. It also causes damage to other important bodily functions. In particular, Hong Kong is leading in the study of ketamine abuse. Studies show that prolonged ketamine use leads to painful urination, debilitating urinary frequency (as frequent as every 10 minutes or even less), incontinence and

3 Price as at June 2013 estimated by the Hong Kong Police. The actual daily dosage varies from person to person taking into account frequency of abuse, age, gender, size and other factors.

haematuria⁴. Some drug abusers have encountered various problems in their day-to-day life, such as constant interruptions in long-distance commutes unless they wear diapers, rendering it difficult to lead a normal working and social life. The urinary bladder is removed in more severe cases and each patient concerned would need to wear an external urostomy bag to collect urine for the rest of his life.

2.14 More importantly, doctors have observed that the urological symptoms due to prolonged ketamine abuse are difficult to be treated by medication. Also, the prevalence of liver injury is high among those ketamine abusers who have already developed urinary tract dysfunction⁵. Reports identify cessation of ketamine abuse as the most effective intervention.

2.15 Treatment by medical specialists such as psychiatrists and urologists is indispensable in many drug abuse cases. From October 2009 to June 2013, the Substance Abuse Clinics (SACs) of the Hospital Authority admitted over 2 200 new patients with drug abuse problems. Of them, 14% were aged below 21, with the youngest being 13. Over 1 200, or 53% of these patients suffered from psychiatric disorder on admission. The common disorders included drug-induced psychosis (29%), depression (23%), adjustment disorder (13%) and schizophrenia (10%).

2.16 Over the past few years, the Hong Kong Poison Information Centre has recorded increasing severity of poisoning among psychotropic substance abusers admitted to public hospitals through the accident and emergency departments. From 2008 to 2013, the percentage of cases with major problems (e.g. organ damage) that usually required admission to the Intensive Care Unit jumped over 9.5 times from 0.6% to 5.6%. The percentage of death cases also doubled from 0.6% to 1.2%.

4 Dr Mak Siu-king, Department of Surgery, North District Hospital (February 2013). A Community Study of Uro-Psycho-Physical Changes in Young Adults Using Ketamine.

5 Dr Tam Yuk-him, Youth Urological Treatment Centre, Prince of Wales Hospital, the Chinese University of Hong Kong “A targeted urological treatment program for secondary school students abusing psychotropic substance and a territory-wide school-based survey of bladder dysfunction symptoms associated with psychotropic substance abuse” released on August 28, 2013.

Cases of Drug Abusers

Ray (pseudonym), 26

Drugs abused: Ice, ketamine and cocaine

- Abused drugs for 10 years. Sentenced to a residential drug treatment centre in 2012 for 15 months under Probation Order. Completed the programme in May 2013.
- Was seeing or hearing things that were not real and occasionally suffered from anxiety and fear of being persecuted. Did not trust others and had no friends.
- Unemployed. Living with parents. Unfit for work due to impaired mental and physical functions, and receiving Disability Allowance for now.
- Parents exhausted savings to pay off the huge debts Ray took on from loan sharks between 2008 and 2012 for abusing drugs. Parents still working to clear the HK\$150,000 borrowed from relatives and friends.

Michelle (pseudonym), 17

Drugs abused: Ketamine and ice

- Abused drugs for five years. Sought help voluntarily from drug counselling and treatment service in May 2013 due to illnesses including renal failure, frequent urination (about every 10 minutes), severe abdominal pain and more.
- Failed to stay long at any job and was often dismissed within a couple of months. Became listless and absent-minded, was forgetful of her responsibilities, and had to go to the toilet a lot at work. Unemployed for now.
- Distressed by the need to find toilets for frequent urination or wear diapers when going out. Prefers to stay at home and has no social life.

- Involved in compensated dating in exchange for drugs. Often feeling depressed and suicidal. Having regular consultations with a gynaecologist, a psychiatrist and a urologist.

2.17 It is clear that the longer the drug abuse history, the more serious the damage to the physical and mental health of the drug abusers, who in general have very low motivation to seek help. The Student Survey indicated that 78% of students who had taken drugs had never sought help. In practice, a drug abuser would start to seek assistance only when he is driven by deteriorating health conditions to do so. This shows the urgency of identifying drug abusing behaviour and intervening as early as possible.

C. Drug Abuse as a Community Problem

2.18 Some argue that drug abuse is a matter of personal choice and that the individual who abuses drugs should bear all the consequences. However, developments in recent years have increasingly testified to the more far-reaching consequences of drug abusing behaviours. We have seen more reported cases of suicidal acts and violent acts committed by individuals suspected of having been under the influence of drugs, victimising not just themselves, but also their close ones and others.

2.19 In particular, drug abuse often has a profound impact on an abuser's family. Family members may experience mixed emotions such as anger, sadness, frustration and shame. We have seen parents who used up all their savings to pay off their children's debts arising from drug abuse, or parents who gave up their jobs to take care of their children who were disabled by drug abuse.

2.20 Given the increasing medical needs of psychotropic substance abusers, the Government has, among other measures, increased the consultation sessions in SACs and introduced on-site medical services to the Counselling Centres for Psychotropic Substance Abusers (CCPSAs). Since 2008, the Beat Drugs Fund has provided sponsorship of around HK\$20 million to community projects to provide more sophisticated services to drug abusers and promote collaboration between the medical sector and social services. The Government has also allocated new

resources to various anti-drug and related service units, so that they can have more capacity to reach out to those in the high-risk group as early as possible and help them.

2.21 In addition, society has to bear a full range of costs⁶. For example, over 30% (63 patients) of a sample of 200 patients of two Substance Abuse Clinics were receiving Disability Allowance in July 2013. From a broader perspective, illicit drug use was estimated to cost 1.4% of GDP in the United States⁷ and 1.1% in Canada⁸. Assuming that the impact of drug abuse in Hong Kong is only half as much as that in Canada in terms of percentage to GDP (i.e. 0.55%), it would cost society around HK\$11 billion or HK\$1,560 per capita⁹.

D. Measures Promoting Early Identification and Early Assistance

2.22 Drug abusers either seek help voluntarily or when they are intercepted by LEOs. The CRDA statistics reflect that those intercepted by LEOs generally have a shorter drug history when compared with those voluntarily seeking help. In 2012, those reported to the CRDA by law enforcement agencies (LEAs) had a median drug history of 2.6 years, which was significantly shorter than the median drug history of 5.2 years as reported by NGOs.

Voluntarily seeking help

2.23 The following are some examples of existing measures to encourage drug abusers to seek help voluntarily:

6 The cost covers abusers' expenditure on drugs; the cost to the medical and welfare systems in providing prevention, treatment, education and welfare services arising from drug abuse; the cost of law enforcement and the criminal justice system in tackling the drug problem; the loss of income due to the lower productivity or non-productivity of abusers; and the cost of property damage under the influence of drugs.

7 National Drug Intelligence Centre, U.S. Department of Justice (2011). The Economic Impact of Illicit Drug Use on American Society.

8 Rehm, J. et al. (2006). The Costs of Substance Abuse in Canada 2002, quoted in Reinox National Focal Point's report to the European Monitoring Centre for Drugs and Drug Addiction.

9 In Hong Kong, a similar study conducted in 1998 estimated that the cost was about 0.3% of the GDP that year. Cheung Y.W. (2000). Social Costs of Drug Abuse in Hong Kong, 1998.

- (a) Publicity and media programmes appealing to drug abusers to seek help voluntarily;
- (b) Publicity and media programmes appealing to parents, teachers and friends to seek help if they find people around them taking drugs; and initiatives to promote community and parental awareness; and
- (c) The enhancement of a public drug helpline, 186 186, in June 2012 to become a round-the-clock service and continued publicity on it since then. As at the end of April 2013, over 40% of drug abusers calling this helpline sought help for the first time, and half of all the callers had a drug history of five years or more.

2.24 In spite of the initiatives of the Government and the anti-drug sector, the worsening situation of hidden drug abuse over the past few years reveals a major gap which remains to be filled. An early opportunity to identify drug abusers and motivate them to seek help is necessary before it becomes too late.

Interception by LEAs

2.25 Consumption of dangerous drugs is a serious arrestable offence under the Dangerous Drugs Ordinance (Cap. 134) (DDO). As part of the five-pronged strategy in countering the drug problem, LEAs ensure rigorous and persistent enforcement actions, including frequent raids by the Police on entertainment venues and intensified actions by the Customs and Excise Department at border control points. It is, however, difficult to prove if an individual has taken drugs.

2.26 Except for provisions under the Road Traffic Ordinance (Cap. 374) (RTO) for motorists suspected of having consumed drugs to undergo drug tests after preliminary drug testing, there is no legal authority under existing legislation or in common law for LEOs to require drug tests to be done for ascertaining whether a person has consumed dangerous drugs, unless with consent of a suspect. In practice, a suspect is unlikely to give consent. People suspected of drug use are mostly prosecuted on other charges, if they are in possession of or found to be trafficking in drugs. In 2012, 58 defendants were prosecuted based

on dangerous drug consumption, as compared to 1 412 for drug possession and 1 189 for trafficking.

2.27 During Police inspections of entertainment venues, it is not unusual to find drugs discarded on the floor, in staircases, in toilets or at other public areas. Even though drugs may be seized and people suspected of having taken drugs may be identified, it is difficult in practice to take further actions since those concerned would not agree to provide bodily samples. From 2011 to 2012, there were 140 cases of dangerous drug seizures at night entertainment venues¹⁰ without arrest.

2.28 There have been joint efforts between LEAs and NGOs to seek out and engage high-risk young people who may have abused drugs. “Operation Retriever” in Yau Tsim Police District¹¹ is an example. If underage persons are found at night/entertainment venues during operations by the Police and their parents are willing, they are referred to social workers of partnering NGOs for follow-up immediately. However, it is not easy to motivate the young people to receive help. Between November 2011 and April 2013, only 23.9% of the underage people found (137 out of 574) were referred to NGOs.

2.29 It is noteworthy that there has been an increasing number of serious drug offences reported by family members. From a keyword search of the Police’s system, there were 27 such cases in 2010, increased to 43 in 2011 and further to 78 in 2012. Some parents have shared that reporting to the Police was the last resort to save their children from drug abuse.

2.30 LEAs can, in carrying out their duties, play a role in helping to identify drug abusers early if RDT is in place. ACAN therefore proposes RDT, so that those identified to have taken drugs would be referred to social workers or health-care professionals for assistance.

10 These include bars, upstairs bars, cyber cafes, pubs, karaoke lounges and restaurants.

11 When underage people are found during raids at high-risk venues, they would be taken to a police station. The Police would contact the parents immediately and refer the teenagers to social workers of a partnering NGO stationed there to receive on-the-spot counselling services.

E. Lawfulness and Human Rights Concerns

2.31 ACAN fully recognises the important issues of the rights of individuals. In light of the Court’s jurisprudence on human rights in Hong Kong, a drug testing scheme could be justified if it is prescribed by law, set up for a legitimate purpose, and rational and proportional to the problem.

2.32 In ACAN’s view, RDT could meet the three aforesaid criteria for the following reasons:

- (a) **Prescribed by law:** As the law does not currently provide for the power to require a person to undergo a drug test, it is necessary to pursue a legislative exercise with support of the legislature;
- (b) **Set up for a legitimate purpose:** Indeed, consumption of dangerous drugs is a serious arrestable offence under the DDO, and drug abuse also causes grave harm to the individual concerned, his family, and society at large. The epidemic nature of drug abuse behaviours, the significant health problems caused and widespread social harms reveal a degree of severity that would justify the implementation of a drug testing scheme if its primary objectives are to provide a deterrent to consumption of dangerous drugs, enable early identification of drug abusers, offer early help to them, especially to the young ones, and protect public health and maintain law and order; and
- (c) **Rationally connected with the legitimate purpose and is no more than what is necessary to accomplish the legitimate purpose:** So far much has been done to tackle the drug problem but the alarming rise in the “drug age” of first-time reported drug abusers suggests the need for examining RDT for achieving the above legitimate purposes in the Hong Kong context. With appropriate safeguards against abuse and other adverse impacts on the individual, we consider that it would be possible to have a scheme which could be a rational and proportionate response to the drug abuse problem that it seeks to tackle.

2.33 Drug testing is not an entirely new concept in Hong Kong. It already applies to drivers suspected of having taken drugs. Amendments to the RTO were enacted in March 2012, empowering police officers to require a motorist suspected of having consumed drugs to undergo a preliminary drug test¹² and, as appropriate, to obtain specimens of blood and urine for laboratory tests.

F. Overseas Practice

2.34 Drug testing is also in place in some overseas jurisdictions as part of their law enforcement efforts.

Sweden

2.35 In Sweden, under the Narcotic Drugs (Punishments) Act, drug testing has been put in place since 1993 to provide opportunity for early intervention against drug abuse. Authorised and trained police officers could request a person to provide a urine sample (or blood sample if necessary) based upon reasonable grounds for suspicion of drug consumption. The drug testing scheme is applicable to all regardless of age. The drug testing scheme is not confined to public places or certain venues. Drug abusers of different ages would face various consequences. Those under 18 may be referred to social services. A minor has to sign an agreement whereby he is required to undergo regular drug testing for a period and attend therapeutic talks and other services as thought fit by a social worker. There will be a fine for breach of agreement. As for those who are aged over 18, they could be sent to compulsory treatment for a maximum of six months if they do not agree to receive voluntary treatment and are considered to be in high-risk situations.

12 In certain circumstances, such as if the motorist involved is in a traffic accident or has committed a traffic offence when the vehicle is in motion, or is suspected of driving under the influence of specified illicit drugs or other drugs or driving after the use or consumption of specified illicit drugs.

Singapore

2.36 In Singapore, under the Misuse of Drugs Act, consumption of controlled drugs is an offence¹³. There is a general provision whereby any Central Narcotics Bureau officer, immigration officer or police officer not below the rank of sergeant may require a person suspected of drug consumption to provide a urine sample for tests. Urine samples will first be tested on the Instant Urine Test (IUT) machine as preliminary screening. After a person has tested positive on the IUT machine, two samples of his urine will be sent for confirmatory tests. A confirmed drug abuser may be required to be subject to supervision, or to be admitted and detained for treatment and rehabilitation.

United Kingdom

2.37 In the United Kingdom, pursuant to the Police and Criminal Evidence Act, the police may require a person who is arrested for or charged with a trigger offence (e.g. robbery, burglary and possession of controlled drugs) to provide a sample of urine or non-intimate sample for the purpose of ascertaining whether there is any specified Class A drug (heroin or cocaine) in his body. This power may also be exercised where a police officer of at least the rank of inspector has reasonable grounds for suspecting that the misuse by that person of a specified Class A drug caused or contributed to the offence for which he is arrested or with which he is charged. A person who fails without good cause to give any sample which may be taken from him is guilty of an offence. The information obtained from the sample may be used for the purpose of informing any decision about the giving of a conditional caution, for the purpose of informing any decision about the appropriate sentence and any decision about his supervision or release in case he is convicted of an offence, for the purpose of drug assessment which the person is required to attend, for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned, etc. These provisions enable identification of problem drug users earlier in the criminal justice system and referral to treatment and other support programmes, even if they do not go on to be charged with any offence¹⁴.

13 A citizen or a permanent resident of Singapore commits this offence even if the consumption takes place outside Singapore.

14 Section 63B of the Police and Criminal Evidence Act 1984 as amended by the Drugs Act 2005.

G. Readiness of Support Services

2.38 ACAN acknowledges the importance of having adequate downstream support services to complement a drug testing scheme. The Government has, over the past few years, allocated considerable resources to enhancing different aspects of preventive education initiatives, and drug treatment and rehabilitation services. For example, SACs are now available in all of the seven clusters of the Hospital Authority. CCPSAs, as the first-line specialised drug counselling services in the community, have more than doubled from five to 11 within three years. Resources have also been allocated for more social workers for outreaching teams and medical and school social services. There is better coordination and integration of different sectors and service modalities for holistic and patient-oriented care for abusers.

2.39 At **Appendix I** is a schematic representation of the tiered multi-modality framework of treatment and rehabilitation services for drug abusers. It embodies a continuum of services from identification, treatment and rehabilitation to reintegration, and highlights the complementary roles of social welfare, health-care, education and aftercare services.

2.40 All these have ensured that downstream support services are currently much more ready to cope with new demands that may arise from RDT.

CHAPTER 3. ISSUES FOR CONSIDERATION

3.1 This chapter sets out the major issues regarding the implementation details of RDT.

Issue 1: Should Hong Kong have RDT?

3.2 ACAN proposes that under RDT, LEOs can help identify drug abusers in their daily enforcement actions by requiring a person to go through a drug testing procedure provided that there is strong circumstantial evidence. The drug abusers identified will be referred to social workers for appropriate counselling and drug-quitting programmes. Where applicable, other professionals like health-care practitioners will be involved in the treatment.

Question 1: Do you agree that, as a matter of principle, Hong Kong should have RDT?

Issue 2: When to Trigger RDT?

3.3 ACAN understands that our community has a reasonable expectation for the protection of civil liberties and human rights. Some people are worried that empowering LEOs to conduct drug tests would infringe on individual rights and cause further tension with the LEOs. ACAN advocates that under RDT, LEOs' power to trigger a drug test must be carefully defined.

3.4 First, only LEOs who have undergone proper training and have been authorised by an officer of at least a certain rank may trigger the RDT power.

3.5 Secondly, there should be clear definition on the scope of application of RDT. As our primary goal is to help drug abusers, RDT power should only be triggered when there is cause to suspect that a person has taken drugs. The case should satisfy the following conditions:

- (a) there are substances suspected of being dangerous drugs present in the near vicinity of the person concerned; **AND**
- (b) the person's physical state, behaviours and/or belongings show that he may have just taken drugs.

3.6 Some real-life examples are set out below to facilitate thought on the matter:

- (a) LEOs inspect an entertainment venue (e.g. a karaoke room inside an upstairs bar) where a dangerous drug is discarded on the floor but nobody admits to its possession. However, people in the room are found to be evasive and have flushed faces, glazed eyes, slurred speech and uncoordinated movements; and
- (b) A 999 call is received and the complainant is a cleaning worker who just found a person lying in the rear staircase of a shopping arcade. LEOs respond at the scene when the person regains consciousness but still has glazed eyes and slurred speech. When questioned on his condition, the person becomes evasive. LEOs find in the near vicinity a banknote with traces of a suspected dangerous drug.

3.7 Under this approach, it requires a high threshold to trigger the RDT power. ACAN considers it crucial to assure the public that a person will not be randomly stopped on the street and arrested by LEOs for a drug test.

3.8 Some people raise that this approach may be too restrictive and may hamper efforts in helping drug abusers. No action could be taken when substances suspected of being drugs have been disposed of, even though the person concerned may show clear signs of being under the influence of drugs. The following are possible scenarios:

- (a) During a routine patrol, LEOs find a group of young people inside a public toilet cubicle of a shopping arcade but nothing suspicious relating to drugs can be found except traces of white powder in the teenagers' nostrils; and

- (b) In the small hours during a routine patrol, LEOs find a group of young people in a public playground with slurred speech and uncoordinated movements. When questioned, the teenagers claim that they have just drunk beer at a cooked food stall. However, no alcohol smell is found on them.

ACAN is willing to hear more views on how to strike a balance between defining the RDT scope and making it effective.

3.9 ACAN understands that the public is also concerned whether RDT power will be applied in private premises. ACAN wishes to point out at the outset that RDT will not give extra power to LEOs to enter into one's premises for investigating drug offences.

3.10 According to existing legislation¹⁵, any Police or Customs officer may, on application to the Magistrate for a warrant, enter and search a place if there is reasonable cause to suspect that a drug offence has been or is about to be committed. The law also provides that when it would not be reasonably practicable to apply for a warrant, a Police or a Customs officer may enter and search any place or premises if there is reason to suspect that there is an article liable to seizure. The aforesaid standard will not be relaxed under RDT. In other words, no new power of entry will be created even if RDT is adopted in future. LEOs would not have more power to enter premises.

3.11 ACAN has heard some views that RDT should categorically be restricted to defined locations, e.g. public entertainment establishments. This suggestion requires careful consideration. Consumption of dangerous drugs is a serious arrestable offence irrespective of places of drug taking. Confining RDT power to specified locations may run the risk of inadvertently driving people to avoid the locations covered by the law.

15 Sections 52(1E) of the DDO.

Question 2: Do you agree that RDT power should be triggered only when (i) substances suspected of being drugs are found in the near vicinity of a person; AND (ii) the person in question shows signs of having just taken drugs? Do you consider it acceptable that some obvious cases would not be covered by RDT for the purpose of maintaining a high threshold in triggering RDT power?

Issue 3: Drug Testing Procedures

3.12 The drug testing procedures should start with a non-intrusive and objective screening test. Only when one fails the screening test would one's bodily samples be collected for conducting a laboratory test.

Screening test (Stage I)

3.13 With reference to legislation against drug driving under the RTO in Hong Kong and practices in other jurisdictions, a person suspected of having taken drugs may have to go through one or more of the following screening tests under RDT.

(i) Drug Influence Recognition Observation (DIRO)

3.14 The DIRO is a short interaction between an LEO and a person for the LEO to form a view as to whether the latter is under the influence of drugs. The LEO will ask the person some simple questions, and observe his reactions, e.g. whether he is able to respond in a normal way. The DIRO is already used by the Police as an on-the-spot screening test to tackle drug driving offences, and is carried out at or near the place of inquiry. If the police officer forms an opinion that the person is not under the influence of drugs, the person shall not be required to undergo an impairment test, nor to provide a urine or blood sample for analysis. However, if the officer forms an opinion that the person is under the influence of drugs, the person shall be arrested.

(ii) Impairment Test

3.15 An impairment test is a scientific-based, structured and systematic assessment to screen for people who are impaired by drugs.

Some specific tests such as eye examination for checking if the pupil is dilated or whether one could balance well on one leg are conducted. Similar to the practice in drug driving, the process should be conducted in a police station and video-recorded.

(iii) Rapid Oral Fluid Test (ROFT)

3.16 ROFT is a short test in which a person who is reasonably suspected of having consumed drugs would be asked to provide an oral fluid sample through a test kit. In Victoria, Australia, for example, ROFT is being used to detect three common types of drugs, namely, ice, cannabis and ecstasy. In Hong Kong, the RTO has already made provision for using ROFT as a screening test. The relevant clauses will be operative when a device suitable for Hong Kong is available. Currently, the relevant industry has been developing a test kit that can cover the most prevalent drugs in Hong Kong. We envisage that ROFT may become available within the next few years.

Laboratory test (Stage II)

3.17 If the results of one or more of the above-mentioned screening tests give an indication that a person may have taken drugs, the person would be required to provide a bodily sample for testing by the Government Laboratory to confirm if there is drug content in the body. With reference to the existing practice in monitoring drug abuse behaviour by the Correctional Services Department and the Social Welfare Department, we envisage that urine would be more common for RDT purposes¹⁶. The collection of a urine sample would take place in a protected environment like a designated toilet cubicle in a police station. It should be an offence if a person refuses to undergo the preliminary drug tests or provide bodily samples for laboratory analysis without a reasonable excuse¹⁷.

16 Hair testing can show a three-month history, but it cannot detect very recent drug use (one to seven days prior to testing). It is therefore not suitable to RDT.

17 Under the RTO, it is an offence to refuse to undergo preliminary tests or provide urine/blood samples under the RTO. Those who are convicted on indictment are liable to a fine of HK\$25,000 and to imprisonment for three years. As to those who are summarily convicted, the first-time offender is liable to a fine of HK\$10,000 and to imprisonment for six months. Those who repeatedly offend are liable to a fine of HK\$25,000 and to imprisonment for 12 months.

3.18 A flowchart indicating the full drug testing procedure is at **Appendix II**.

Question 3: Do you have any comments on the proposed two-stage drug testing procedures?

Issue 4: Safeguarding Individual Rights

3.19 To allay concerns about possible abuse of power by LEOs, ACAN proposes a series of safeguard measures to protect individual rights. The following lists out the ones already mentioned in the previous paragraphs:

- (a) Only trained and authorised LEOs would trigger the power of RDT and conduct the test (paragraph 3.4);
- (b) RDT should only be applied when these two conditions are met: (i) the presence of substances suspected to be dangerous drugs in the near vicinity; and (ii) the person's physical state, behaviour and belongings show signs of drug use (paragraph 3.5)¹⁸;
- (c) A person must have gone through an objective and non-intrusive screening test first. Only if the person fails one or more of the screening tests would he be required to give an intimate bodily sample, e.g. urine, in a protected and designated spot for the laboratory analysis (paragraphs 3.13 to 3.18); and
- (d) The impairment test should be video-recorded (paragraph 3.15).

3.20 ACAN recognises the sensitivity of collecting intimate bodily samples for laboratory testing, in particular with regard to minors aged below 18. For those who are aged below 18, we propose that a person independent of the LEAs should be present during the provision of bodily samples to ensure procedural fairness. The role could be assumed by

¹⁸ ACAN is willing to hear more views on whether such conditions are too restrictive.

parents or legal guardians (or relatives) or an independent person in case the former could not be contacted. We are open to suggestions on how the pool of independent people should be formed, including the suggestion of drawing up a list consisting of lawyers, social workers, legislators, Justices of the Peace and others.

3.21 There should also be defence provisions, for instance, for drug consumption in accordance with advice or prescription given by health-care professionals.

3.22 We welcome further views from the public on what other measures could be put in place to protect individual rights.

Handling of personal data

3.23 Personal data privacy is another important subject. LEAs would need to keep records to know the number of times a person had tested positive in order to choose between referral to counselling or considering prosecution. LEAs should strictly adhere to the requirements for data privacy protection enshrined by the Personal Data (Privacy) Ordinance (Cap. 486) and the Code on Access to Information. On top of extant guidelines and manuals, LEAs may need to develop further protocols to ensure that the data privacy requirements of RDT procedures are satisfied. Moreover, they should set up a separate database with strict guidelines on when the information could be retrieved. ACAN does not envisage that such data should be retrieved when an LEO stops someone on the street for an identity check.

Question 4: Do you have any suggestions on how to safeguard individual rights?

Issue 5: Who Should be Subject to RDT?

3.24 ACAN has heard different views as to whether RDT should apply only to young people or to people of all ages, and, if the former, where to draw the line. Some argue that RDT should be confined to underage people because they are more vulnerable to drugs, hence warranting more protection.

3.25 From a broader perspective, drug consumption is a criminal offence regardless of the age of the offenders. Some may argue that if younger abusers are required to undergo drug testing but adult abusers are let off scot-free, it could give the message that drug consumption beyond a certain age is of no legal consequence. It could also be seen as discriminatory and unfair. Moreover, there are practical difficulties for front-line LEOs in differentiating between adult and juvenile drug abusers on the spot. Accordingly, this lends support to RDT applicable to people of all ages.

Question 5: Should drug testing be applicable to people of all ages?

Issue 6: Consequences: A Chance of Counselling and Treatment or Prosecution

3.26 The purpose of RDT, as stated at the outset, is to help drug abusers. Drug abusers found under RDT, where applicable, would be given a chance of non-prosecution and referred to appropriate counselling and treatment services as soon as possible. ACAN envisages that social workers and drug treatment and rehabilitation services will receive the referrals and play an even more prominent role in the follow-up services. Many of our social workers have expertise in dealing with drug abuse problems. For example, the 11 CCPSAs in Hong Kong could serve as the first stop of referral. Social workers would work out an individualised programme, in collaboration with professionals of other disciplines, with each drug abuser and his family and follow through.

3.27 ACAN also wishes to highlight two specific issues, namely, (a) who (in terms of age) should be eligible for a chance of non-prosecution; and (b) how many chance(s) should be allowed, in place of prosecution.

Eligible age

3.28 In the extant system, juvenile offenders (aged above 10 but under 18) are allowed an additional chance instead of facing immediate criminal prosecution. This is in line with the general philosophy of protecting the welfare of young people by diverting them away from the criminal justice system. Likewise, RDT's objective is to enhance early intervention and rehabilitation rather than be a tool for punishing offenders.

3.29 Under our criminal justice system, adults, having reached the age of sufficient maturity, are generally expected to appreciate the full risks and dangers associated with this type of criminal behaviour. They should be made to face the full consequences of their own conduct. Some may challenge why adults who test positive should enjoy more lenient treatment than those who commit other offences arguably of similar gravity, such as dangerous drugs possession¹⁹ which attracts similar levels of punishment under the law.

3.30 Some hold the view that everyone, irrespective of age, should have at least one chance, as the damage done to one's body does not vary with age. They may reason that adults would need early referral to counselling and treatment services as much as young people do. Indeed, 21 to 30 became the largest age group of first-time reported abusers in 2012. A natural question that follows from giving everyone a chance is whether this could lead to the impression that there will be no legal consequences unless and until a person is caught for the second time. This may encourage people to have a taste of drugs at least once in their lifetime.

3.31 If every person, irrespective of age, can be given at least one chance²⁰, it may be necessary to amend the law to give a blanket exemption to all those tested to have consumed drugs for the first time.

¹⁹ Under the DDO, dangerous drug possession is also subject to a maximum penalty of a fine of HK\$1 million and seven years' imprisonment.

²⁰ This is without prejudice to the possibility of charges for the consumption offence based on evidence other than the drug test result, or charges for non-consumption drug-related offences.

This will give more certainty to application of the law ²¹, but will obviously be more liberal than the established policy of zero tolerance.

3.32 The public is invited to state their views on the issue.

Question 6(a): Do you agree that drug abusers, irrespective of age, should be eligible for a chance to receive counselling and treatment programmes in place of prosecution?

Number of chances

3.33 The Task Force back in 2008 suggested a choice between a two-tier system and a three-tier system. Under a three-tier system, a person tested positive for the first time would be given a warning and offered the services of voluntary treatment and rehabilitation programmes. If the same person is caught and tested positive for a second time, the LEO of a sufficiently senior rank has the discretionary power to offer the second-timer a mandatory treatment option in lieu of prosecution. If the same person is caught and tests positive for a third time or more, he would be prosecuted and the positive drug test result would be admissible evidence to prove consumption at trial. Conversely, if a two-stage system is adopted, a first warning would be given. A first-timer would be offered a choice between mandatory treatment and prosecution.

3.34 ACAN understands that some favour giving only one chance in lieu of prosecution, be it in the form of voluntary or mandatory counselling and treatment programmes. Some others favour two chances in lieu of prosecution. They argue that quitting drugs could be a long journey with repeated failures. It is not uncommon for a drug abuser to take more than one round of treatment before full recovery. Some more extreme views even suggest that dangerous drug consumption should be decriminalised, but there should be legal consequences if those who test positive fail to receive treatment.

²¹ Whichever option is ultimately chosen, the mechanism for making the option work must not interfere with the Secretary for Justice's control over prosecutions as stipulated in Article 63 of the Basic Law.

3.35 A possible way is to give drug abusers who are below the age of 18 more lenient treatment than that given to adults. This is also in line with the principle of protection of juveniles. For example, if an adult is allowed one chance, then a person below 18 may be given two chances. We have summarised the options representing varying degrees of leniency at **Appendix III**.

3.36 Subject to the public's view on whether only one non-prosecution chance or more should be given, a two- or three-tier system could be developed. ACAN would like to lay down the overall principle that, under RDT, LEOs would play a role only in the part of identifying drug abusers. Then, social workers and other professionals such as healthcare practitioners will take up the role to devise a treatment programme according to the circumstances of each case to help them quit drugs. ACAN also recognises the importance of working out an effective referral and follow-up mechanism, details of which can be developed at a later stage. Some have suggested that there should be elements of monitoring and supervision, such as follow-up drug tests to ensure that a drug abuser would complete the treatment programme and stay drug-free for at least a certain period of time. ACAN notes that setting up a new mechanism may require additional resources and time.

Question 6(b): How many chances of counselling and treatment should be given under RDT? Should people below a certain age be eligible for more chances?

Issue 7: What about Situations in which Drugs were Taken outside Hong Kong?

3.37 Turning to the question of whether RDT should also cover situations in which drugs were taken outside Hong Kong, the Task Force envisaged certain enforcement difficulties. Some individuals, especially those who frequently venture outside Hong Kong to take drugs, might argue that the drugs had been consumed outside Hong Kong. More people might therefore go across the boundary to seek indulgence, exacerbating the cross-boundary drug abuse problem.

3.38 From the operational perspective, the latest drug situation and the cross-boundary passenger flow have together presented a mixed picture of the issue. First, the percentage of reported drug abusers aged under 21 taking drugs outside Hong Kong steadily decreased from 13.0% in 2008 to 4.2% in 2012. On the other hand, it is common for a person to commute daily once, if not more, across the boundary. This daily return travel pattern could increase difficulties for law enforcement. Even if a person has actually taken drugs in Hong Kong, he may argue that the drugs were taken outside Hong Kong, with the support of travelling records. From a snapshot of a week in March 2013²², 42% of Hong Kong Identity Card holders who went across the boundary made one or more single-day return trips. The corresponding percentage for those aged below 21 is even higher at 59%.

3.39 ACAN would like to present two options below for public consideration.

Option One: Extra-territorial effect for the consumption offence

3.40 Noting that the Basic Law does not prohibit the legislature from making law with extra-territorial effect and that there are recent legislative precedents of extra-territoriality, there may be a case to consider giving extra-territorial effect to the drug consumption offence. That said, extra-territorial effect also involves various complex issues such as whether the proposed extra-territoriality should apply only to Hong Kong residents or to anyone regardless of his nationality or residency. Any such provision should be carefully crafted to avoid undue intrusion into the jurisdictions of other territories.

Option Two: Adding a new offence of presence of dangerous drugs in bodily samples

3.41 With reference to the drug testing scheme under the RTO, we can consider a new approach based on the presence of dangerous drugs in bodily samples instead of the act of consuming dangerous drugs. Under this approach, a person who is tested positive in Hong Kong with any concentration of dangerous drugs should be referred to counselling or prosecution regardless of the actual location of drug abuse.

22 Immigration Department's figures.

3.42 This can do away with the need to prove that a person had taken the drugs in Hong Kong. However, it gives rise to conceptual questions like whether to retain the existing offence of consumption of dangerous drugs under DDO.

Question 7: Do you think RDT should apply to drug consumption that happened outside Hong Kong?

Issue 8: Other Issues

Resource implications

3.43 ACAN acknowledges that RDT, if implemented, will entail new arrangements for provision of downstream support services, especially if a new standalone tiered system is to be developed. It will also create pressure on the manpower of LEAs. ACAN would recommend to the Government the need to proportionally increase resources in related areas if RDT is to be pursued.

Monitoring of RDT

3.44 ACAN is conscious of the need to demonstrate to the public whether RDT is effective overall. A host of indicators including the number of drug abusers identified under RDT and the admission and completion figures of counselling and treatment programmes, as well as the trends of the overall drug situation, could be gathered and presented to relevant parties such as ACAN, the Legislative Council and the Fight Crime Committee periodically. ACAN would also take up the responsibility of closely monitoring RDT. The existing independent watchdogs of LEAs should continue to oversee the operation of LEAs under RDT.

Other suggestions

3.45 Drug abuse is a complex social issue and RDT is not meant to be a panacea for the problem. Rather, RDT should complement existing anti-drug efforts, in particular treatment and rehabilitation. At the same time, other prongs of the anti-drug strategy would continue to play an

indispensable role in our efforts and complement one another. Preventive education and publicity, notably, will continue to be the mainstay of the drug demand reduction efforts; it is the very first line of defence. We will continue to educate the public about drug harms and encourage drug abusers to seek help.

3.46 While we put forward RDT as an option for consideration, we welcome any other suggestions that could effectively tackle the problem of hidden drug abuse.

Question 8: Do you have any other suggestions for us?

List of Questions for Consultation

Question 1: Do you agree that, as a matter of principle, Hong Kong should have RDT?

Question 2: Do you agree that RDT power should be triggered only when (i) substances suspected of being drugs are found in the near vicinity of a person; AND (ii) the person in question shows signs of having taken drugs? Do you consider it acceptable that some obvious cases would not be covered by RDT for the purpose of maintaining a high threshold in triggering RDT power?

Question 3: Do you have any comments on the proposed two-stage drug testing procedures?

Question 4: Do you have any suggestions on how to safeguard individual rights?

Question 5: Should drug testing be applicable to people of all ages?

Question 6:

- (a) Do you agree that drug abusers, irrespective of age, should be eligible for a chance to receive counselling and treatment programmes in lieu of prosecution?
- (b) How many chances of counselling and treatment should be given under RDT? Should people below a certain age be eligible for more chances?

Question 7: Do you think RDT should apply to drug consumption that happened outside Hong Kong?

Question 8: Do you have any other suggestions for us?

CHAPTER 4. WAYS OF PROVIDING VIEWS AND COMMENTS

4.1 Please send us your views by mail, facsimile or email within the consultation period:

Address: Action Committee Against Narcotics Secretariat
30/F, High Block, Queensway Government Offices,
66 Queensway,
Hong Kong

Fax No.: 2810 1773

Email Address: consultation@acan.org.hk

4.2 It is voluntary for members of the public to supply their personal data upon providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant government bureaux and departments for purposes directly related to this consultation exercise. The government bureaux and departments receiving the data may only use the data for such purposes.

4.3 The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper may be published for public viewing. We may, either in discussion with others, whether privately or publicly, or in any subsequent report, cite comments submitted in response to this consultation paper.

4.4 To safeguard senders' data privacy, we will remove senders' relevant data, such as residential/return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signatures, where provided, when publishing their submissions.

4.5 We will respect the wishes of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their submissions will not be published.

4.6 If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

4.7 Any sender providing personal data to ACAN in the submission will have rights of access and correction with respect to such personal data. Requests for data access and correction of personal data should be made in writing to:

Address: Action Committee Against Narcotics Secretariat
30/F, High Block, Queensway Government Offices,
66 Queensway,
Hong Kong

Fax No.: 2810 1773

Email Address: consultation@acan.org.hk

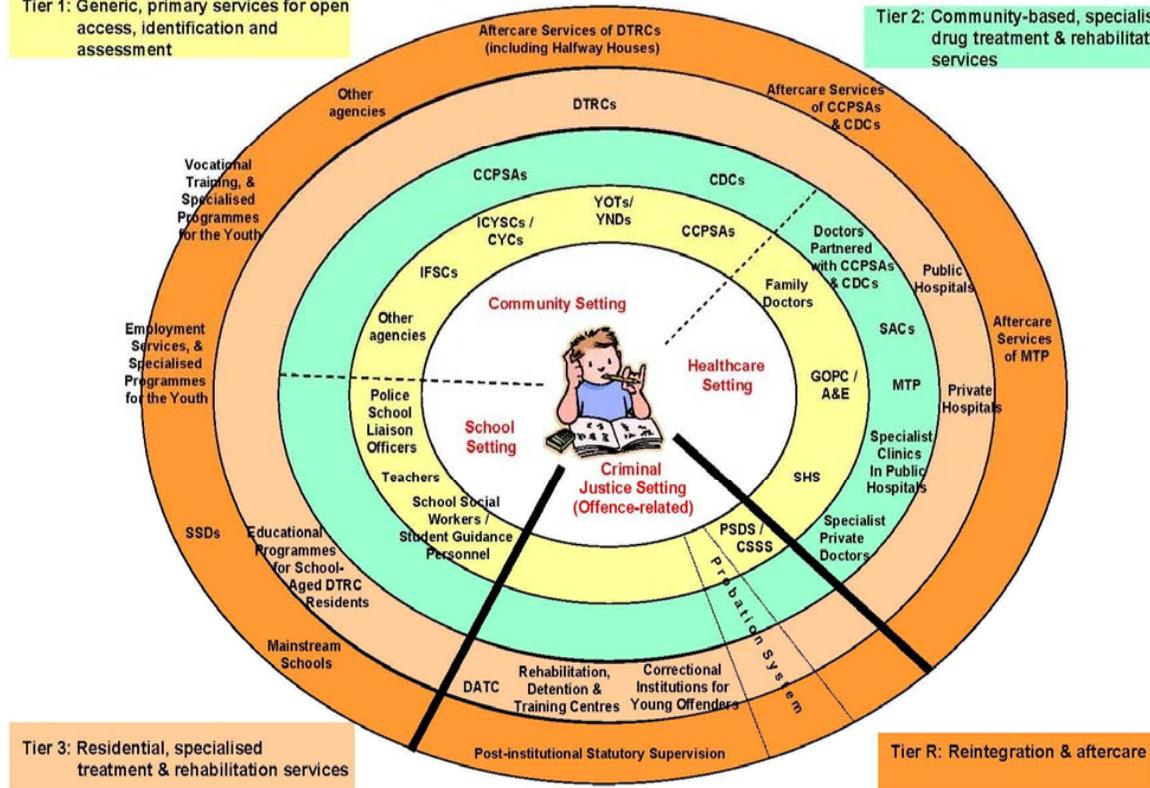
**Action Committee Against Narcotics
September 2013**

Appendix I

A Tiered, Multi-modality Approach of Treatment and Rehabilitation Services for Drug Abusers in Hong Kong (Second Edition)

Tier 1: Generic, primary services for open access, identification and assessment

Tier 2: Community-based, specialised drug treatment & rehabilitation services



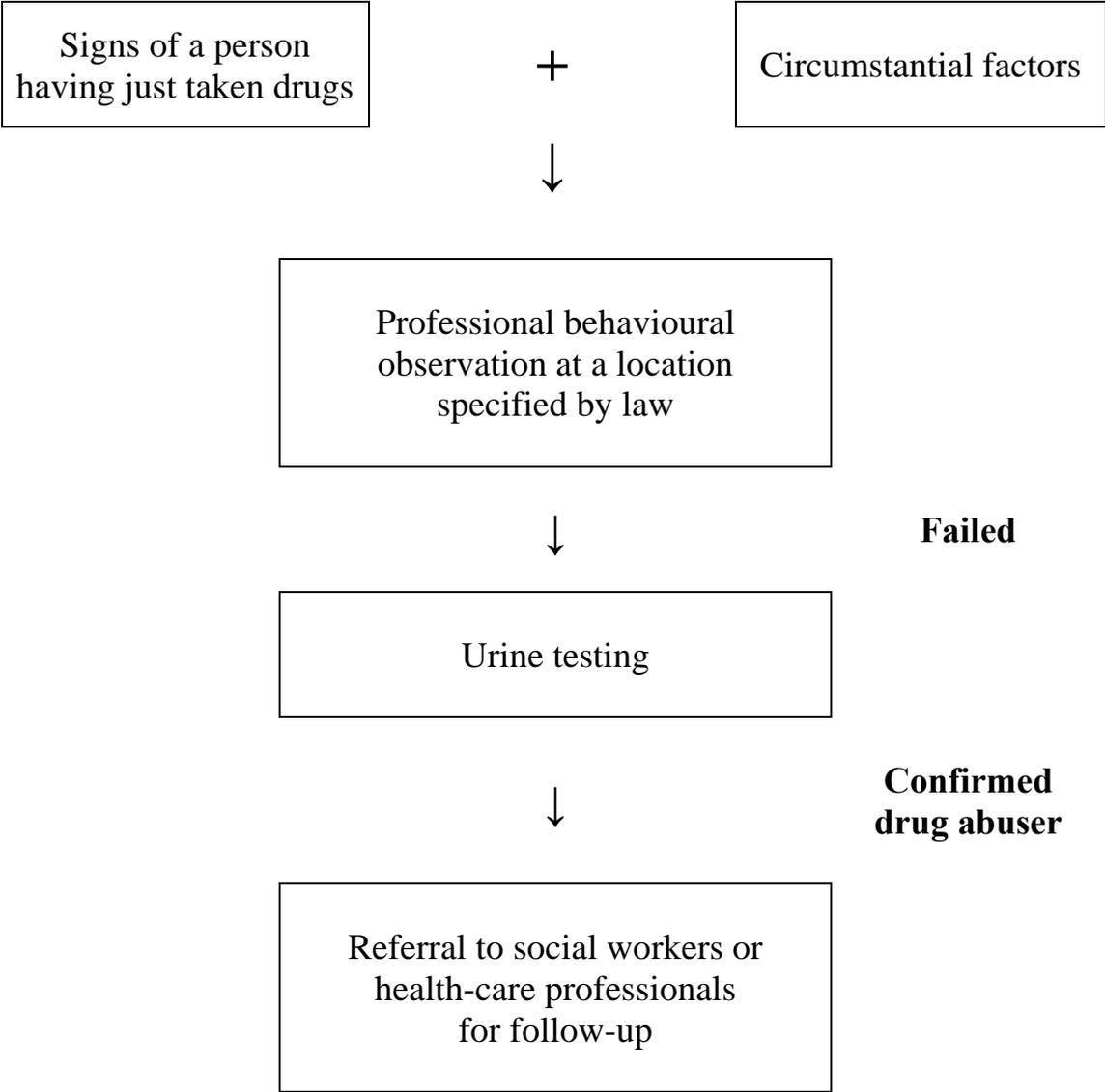
Tier 3: Residential, specialised treatment & rehabilitation services

Tier R: Reintegration & aftercare

Abbreviations

- A&E: Accident and Emergency Unit
- CCPSAs: Counselling Centres for Psychotropic Substance Abusers
- CDCs: Centres for Drug Counselling
- CSSS: Community Support Service Scheme
- CYC: Children and Youth Centres
- DATC: Drug Addiction Treatment Centre
- DTRCs: Drug Treatment and Rehabilitation Centres
- GOPC: General Outpatient Clinic
- ICYSCs: Integrated Children and Youth Services Centres
- IFSCs: Integrated Family Services Centres
- MTP: Methadone Treatment Programme
- PE&P: Preventive Education and Publicity Scheme
- PSDS: Police Superintendents' Discretion Scheme
- SACs: Substance Abuse Clinics
- SHS: Student Health Service
- SSDs: School of Social Development
- YNDs: Overnight Outreaching Service for Youth Night Drifters
- YOTs: District Youth Outreaching Social Work Teams

**Proposed Drug Testing Procedures
Under the RESCUE Drug Testing**



**RESCUE Drug Testing
Options of Treatment instead of Prosecution¹**

	Most Stringent	More Lenient	Most Lenient
Eligible Age	All subject to prosecution	Aged below 18 only	All ages
No. of Chances	No chance at all	One chance	Two or more chances, or even decriminalisation
Remarks	Fully in line with zero-tolerance policy	Some favour more lenient treatment for young people	Most liberal approach

¹ Despite the title of this Appendix, it should be noted that as the person is prosecuted and convicted, sentencing options themselves can contain mandatory treatment and rehabilitation elements.

List of Abbreviations

ACAN	Action Committee Against Narcotics
CCPSAs	Counselling Centres for Psychotropic Substance Abusers
CRDA	Central Registry of Drug Abuse
CSSS	Community Support Service Scheme
DDO	Dangerous Drugs Ordinance (Cap. 134)
DIRO	Drug Influence Recognition Observation
DTRC	Drug Treatment and Rehabilitation Centre
GDP	Gross Domestic Product
IUT	Instant Urine Test
LEAs	Law enforcement agencies
LEOs	Law enforcement officers
NGOs	Non-government organisations
PSDS	Police Superintendents' Discretion Scheme
RDT	RESCUE Drug Testing Scheme
ROFT	Rapid Oral Fluid Test
RTO	Road Traffic Ordinance (Cap. 374)
SACs	Substance Abuse Clinics
Task Force	Task Force on Youth Drug Abuse
The Student Survey	2011/12 Survey of Drug Use among Students

